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9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 vs.

16 JASON EDWARD THOMAS
CARDIFF,

17 Defendant.
18
19

Case No. 5:23-CR-00021-JGB

**DEFENDANT JASON CARDIFF'S
NOTICE OF MOTION AND
MOTION TO DISMISS
INDICTMENT WITH PREJUDICE;
MEMORANDUM OF POINTS AND
AUTHORITIES**

*[Filed concurrently with Declaration of
Stephen G. Larson; Declaration of
Jason Cardiff; and [Proposed] Order]*

20 Date: May 6, 2024
21 Time: 2:00 p.m.
Courtroom: 1
22
23

24 **[REDACTED VERSION OF DOCUMENT FILED**
25 **CONDITIONALLY UNDER SEAL]**
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1 TO ALL PARTIES AND ATTORNEYS OF RECORD:


2 PLEASE TAKE NOTICE that on May 6, 2024, at 2:00 p.m., or on the date
3 and time as otherwise set by the Court, in the courtroom of the Honorable Jesus G.
4 Bernal, United States District Judge, Defendant Jason Cardiff (“Cardiff”), by and
5 through his attorneys of record, Stephen G. Larson, Hilary Potashner, and Jonathan
6 Gershon, will hereby move this Honorable Court for an order dismissing the
7 indictment with prejudice based on a violation of Cardiff’s Fifth Amendment due
8 process rights. Alternatively, Cardiff will hereby move this Honorable Court for an
9 order suppressing all evidence secured by the United States Postal Inspection
10 Service, Department of Justice, and United States Attorney’s Office in violation of
11 his Fifth Amendment right to due process and in circumvention of his Fourth
12 Amendment rights against unreasonable searches and seizures. Moreover, Cardiff
13 requests an evidentiary hearing to further develop the record in support of this
14 Motion.

15 This Motion is based upon the attached Memorandum of Points and
16 Authorities, the Declaration of Stephen G. Larson, the Declaration of Jason Cardiff,
17 and all files and records in this case, and any further evidence as may be adduced at
18 the hearing on this Motion.

19
20 Dated: April 8, 2024

LARSON LLP

21
22
23 By:


Stephen G. Larson
Hilary Potashner
Jonathan Gershon

24 Attorneys for Defendant
25 JASON EDWARD THOMAS CARDIFF
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1 U.S. Const., amend XIV32

2 *What We Do*, United States Postal Inspection Service,

3 <https://www.uspis.gov/about/what-we-do> (last visited Feb. 12,

4 2024) 1

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Indictment is the result of a years-long, clandestine, and joint criminal investigation of Cardiff by the Federal Trade Commission (“FTC”), the government’s criminal investigators and prosecutors (the United States Postal Inspection Service (“USPIS”)¹, the Department of Justice (“DOJ”), and the United States Attorney’s Office (“USAO”) (collectively “the Government”)), and the court-appointed Receiver. Together, with the Government clearly at the helm, these governmental agencies and this court appointee abused their power and manipulated the civil court system to illegally build this criminal case against Cardiff.

The Government began its criminal investigation into Cardiff no later than July 24, 2018. Shortly thereafter, on October 10, 2018, the FTC filed a civil complaint against Cardiff and his company, Redwood Scientific Technologies, Inc., entitled *FTC v. Jason Cardiff et al.*, Case No. 5:18-CV-02104-DMG-PLA (“FTC Action”), and immediately moved for the appointment of Robb Evans & Associates LLC (“Robb Evans LLC” or the “Receiver”) to serve as a receiver in the FTC Action.

Receivers serve at the direction of the Court. Their appointments give them extensive power and access to the businesses under receivership. They are, at all times, officers of the court, required to serve in a neutral capacity to assist the court in its judicial functions. Accordingly, while serving in these powerful positions, their actions are strictly governed by the Code of Conduct for United States Judges.

¹ The USPIS is the federal law enforcement arm of the United States Postal Service; in part, the USPIS conducts criminal investigations related to alleged crimes involving the postal system, its employees, and its customers. *What We Do*, United States Postal Inspection Service, <https://www.uspis.gov/about/what-we-do> (last visited Feb. 12, 2024).

1 The FTC, Receiver, and the Government were all well aware of the
2 Receiver's ethical and legal responsibilities when they knowingly trampled over
3 them. From the start, the FTC engineered the selection of a receiver whom the
4 Government knew would provide them unfettered access and information about
5 Cardiff outside the bounds of subpoenas, court orders, and the United States
6 Constitution. And, once appointed, the Receiver immediately began delivering for
7 the Government.

8 Within days of his appointment—and without ever alerting the Court or
9 Cardiff—Brick Kane of Robb Evans LLC agreed to allow USPIIS into Cardiff's
10 business for a 10-hour inspection, allowing the Government to do a full-scale
11 inventory of its business records complete with photographs and hard drive imaging.
12 Shortly thereafter, the Receiver waived attorney-client privilege, directing his
13 counsel to send routine updates and summaries of his findings about Cardiff and his
14 business practices at Redwood to the Government for the sole purpose of assisting
15 in the development of the criminal case. When it came time for the Government to
16 acquire third-party records, the Receiver was again there for the Government, giving
17 express consent for the release of any and all third-party records without the need
18 for Court order or subpoena. The Receiver's active role in the building of this
19 criminal case was a clear abuse of the trust and authority that the Court vested in
20 him, having nothing to do with his administration of the businesses in receivership.
21 Additionally, it amounted to fraud on the Court as his work on behalf of the criminal
22 prosecution team was all intentionally hidden from the Court. What is more, time
23 and time again, the Government, fully complicit and leading the efforts, knowingly
24 and successfully tapped into the Receiver's access and power to secretly build its
25 criminal case against Cardiff.

26 The joint task force's secretive work was extensive. After the FTC
27 orchestrated the appointment of the Government-allied receiver, it also went to work
28 helping build the Government's criminal case while prosecuting the FTC Action. As

1 it engaged in civil discovery and learned information through its case, the FTC
2 relayed its spoils to the Government to help build its criminal case. Documents,
3 deposition transcripts, evaluations of friendly witnesses, and email communications
4 from Cardiff's counsel all flowed from the FTC to the Government. This was far
5 from a parallel investigation. Instead, this was a coordinated, concerted, and fully
6 integrated effort by the Government, the FTC, and the Receiver to capitalize on the
7 discovery and receivership process in the FTC Action to build a criminal case—all
8 in violation of the Code of Conduct for United States Judges and Cardiff's
9 constitutional rights.

10 The constitutional violations did not end there. After developing the criminal
11 case behind closed doors, the FTC, Government, and Receiver coordinated the
12 destruction of a massive amount of evidence and documents relating to Cardiff and
13 his business practices. With the Government's express knowledge, the FTC and the
14 Receiver requested that the Court order Cardiff to destroy key documents and permit
15 the Receiver to do the same. When making these requests, they failed to alert
16 Cardiff or the Court that there was a criminal case about to be filed. In the dark, the
17 Court granted their requests. Documents and evidence containing customer
18 information, exculpatory or otherwise, were destroyed. And only then did the
19 Government reveal—through the unsealing of this Indictment—its criminal case.
20 Failing to advise the Court of the entire picture while seeking destruction of
21 evidence in this case was not only an egregious fraud on the Court, but a clear
22 violation of Cardiff's constitutional rights to due process and a fair trial.

23 As a result of the Government's repeated misconduct and its violation of
24 Cardiff's constitutional rights, Cardiff seeks dismissal with prejudice of the
25 Indictment. In the alternative, Cardiff requests suppression of all evidence obtained
26 by the Government through its unlawful criminal investigation. Moreover, Cardiff
27 requests an evidentiary hearing to further develop the record in support of this
28 Motion. *See Kastigar v. United States*, 406 U.S. 441 (1972).

1 **II. STATEMENT OF FACTS**

2 As evidenced in Exhibit 1²—a summary exhibit created by the defense
3 detailing 710 separate communications between and among the Receiver, USPIS,
4 FTC, DOJ, and/or USAO—the inescapably intertwined nature of the government’s
5 civil and criminal investigative efforts is undeniable. (Declaration of Stephen G.
6 Larson (“Larson Decl.”), Ex. 1.) In fact, the following chronology highlights how
7 the Government utilized both the FTC Action (a civil lawsuit) and the appointed
8 Receiver to acquire evidence for a criminal prosecution in circumvention of
9 Cardiff’s Fourth Amendment rights and in violation of his Fifth Amendment rights:

- 10 • **July 17, 2018:** [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED] (*Id.* at Ex. 2, p. 2.) [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED] (*Id.*)
17 • **July 24, 2018:** [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED] (*Id.* at
21 [REDACTED])

22 ² Exhibit 1 likely does not contain all the communications among these agencies as
23 the Government has declined, despite repeated requests, to provide certain
24 communications relating to its Cardiff investigation—seemingly based on claims of
25 privilege or claims that certain communications fall outside of their discovery
obligations.

26 ³ A certification submitted to the FTC in compliance with 16 C.F.R. § 4.11(c) is
27 referred to as a “Request for Non-Public Materials and Certification of Intent to
28 Maintain Confidentiality and Restrict Use to Law Enforcement Purposes.” Under 16
C.F.R. § 4.11(c), the production of nonpublic records to requesting law enforcement

Ex. 3.)

(*Id.*)

(*Id.* at Ex. 4, p. 1.)

(*Id.* at Ex. 5.)

(*Id.* at Ex. 6.)

agencies is permitted *so long as* the requesting agency submits a certificate stating the nature of the law enforcement activity, the anticipated relevance of the information, and that the information will be kept confidential. Under this statute, the requesting agency must notify the submitter of the information being requested unless the requesting agency requests otherwise. 16 C.F.R. § 4.11(c).

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- [REDACTED]
- [REDACTED] (*Id.* at Ex. 7.)
- **September 4, 2018:** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (*Id.* at Ex. 8.)
 - **September 6, 2018:** [REDACTED]
[REDACTED]
[REDACTED] (*Id.* at Ex. 9, p. 1.)
 - **October 5, 2018:** [REDACTED]
[REDACTED] (*Id.* at
Ex. 10 at p. 1.) [REDACTED]
[REDACTED]
[REDACTED] (*Id.*) [REDACTED]
[REDACTED]
[REDACTED] (*Id.*)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (*Id.*) [REDACTED]
[REDACTED] (*Id.*)
 - **October 10, 2018:** [REDACTED]
[REDACTED] (*Id.* at p. 2.) [REDACTED]
[REDACTED]
[REDACTED] (*Id.*) [REDACTED]
[REDACTED]

1 [REDACTED] (*Id.*) [REDACTED]
2 [REDACTED] (*Id.*)
3 • **October 10, 2018:** The FTC files the FTC Action against Cardiff in his
4 role as President and Chief Executive Officer of Redwood. (*Id.* at Ex.
5 11.) The matter was initially assigned to the Honorable S. James Otero
6 but was transferred to the Honorable Dolly M. Gee on April 2, 2020.
7 • **October 10, 2018:** The FTC files an *ex parte* temporary restraining
8 order (“TRO”), seeking *inter alia* the appointment of Robb Evans LLC
9 as temporary receiver over, in relevant part, Redwood and the assets of
10 Cardiff.⁴ While the TRO was pending, [REDACTED]

11
12 ⁴ Robb Evans LLC was a known ally of the FTC and DOJ. The company boasted
13 about repeated nominations by both entities. *Home Page*, Robb Evans & Associates,
14 LLC <https://www.robbevans.com/> (last visited Feb. 18, 2024) (“We have been
15 repeatedly nominated by the Federal Trade Commission, the Commodity Futures
16 Trading Commission, the Securities and Exchange Commission, and the United
17 States Department of Justice.”); e.g., *Fed. Trade Comm’n v. Assail, Inc.*, Case No.
18 6:03-CV-00007 (W.D. Tex. June 14, 2009) and related criminal prosecution *USA v.*
19 *Kimoto*, Case No. 3:07-cr-30089-SPM-1 (S.D. Ill. July 14, 2010); *Fed. Trade*
20 *Comm’n v. AH Media Group, LLC*, Case No. 19-CV-040220JD (N.D. Cal. Feb. 11,
21 2022); *Fed. Trade Comm’n v. M&T Fin. Grp.*, Case No. CV17-06855-
22 ODW(PLAX) (C.D. Cal. June 8, 2018); *Fed. Trade Comm’n v. AI DocPrep Inc.*,
23 Case No. CV17-07044-SJO (JCX) (C.D. Cal. May 7, 2018); *Fed. Trade Comm’n v.*
24 *Sale Slash, LLC*, Case No. CV15-03107 PA (AJWX) (C.D. Cal. April 27, 2015);
25 *Life Alert Emergency Response, Inc. v. Connectamerica.com, LLC*, Case No. LA
26 CV13-03455 JAK (SSX) (C.D. Cal. June 3, 2014); *Fed. Trade Comm’n v. American*
27 *Mortg. Consulting Grp., LLC*, Case No. SACV12-01561 DOC (C.D. Cal. Oct. 1,
28 2012); *Fed. Trade Comm’n v. Data Med. Capital, Inc.*, Case No. SA CV 99-1266
AHS (EEX) (C.D. Cal. July 6, 2010); *Fed. Trade Comm’n v. Lucaslaw Ctr., Inc.*,
Case No. SACV 09-0770 DOC (ANX) (C.D. Cal. June 3, 2010); *Fed. Trade*
Comm’n v. Loss Mitigation Services, Inc., Case No. SACV 09-0800 DOC (ANX)
(C.D. Cal. Dec. 7, 2009); *Fed. Trade Comm’n v. Nat’l Foreclosure Relief, Inc.*, Case
No. SACV09117DOC(MLGX) (C.D. Cal. March 6, 2009); *Fed. Trade Comm’n v.*
J.K. Publ’ns, Inc., Case No. CV 99-00044 ABC AJW (C.D. Cal. April 13, 2009);
Fed. Trade Comm’n v. Universal Premium Servs., Case No. CV 06-0849 SJO
(OPX) (C.D. Cal. June 8, 2006).

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] (*Id.* at Ex. 12.) The Proposed Order,
5 which the Court adopted the same day, allowed the Receiver to
6 “cooperate with *reasonable* requests for information or assistance from
7 any state or federal civil or criminal law enforcement agency.” (*Id.* at
8 Ex. 13, p. 25.) (emphasis added.) Robb Evans LLC then begins serving
9 as the Receiver. (*Id.* at Ex. 14, p. 2.)

- 10 • **October 10, 2018:** [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED] (*Id.* at Ex. 15, p. 1.) [REDACTED]
14 [REDACTED]
15 [REDACTED] (*Id.*)
- 16 • **October 12, 2018:** Receiver takes possession of Redwood’s offices and
17 assets. (Declaration of Jason Cardiff (“Cardiff Decl.”), ¶ 5.) While
18 Cardiff is present, the Receiver does not seek any substantive
19 information from him about the business operations or the pending
20 FTC allegations. (*Id.*)

- 21 • **October 18, 2018:** [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED] (*Id.* at Ex. 16, p. 1.)

- 27 • **October 22, 2018:** [REDACTED]
28 [REDACTED]

1 [REDACTED] (*Id.*) The Receiver’s timekeeping records for this
2 day note a 10.1-hour entry for “assist[ing] Christine Reins-Jarin.” (*Id.*
3 at Ex. 14, p. 41.) Notably, the Receiver had not returned to Redwood
4 between October 12, 2018 and October 22, 2018. (*Id.*) Nor do his
5 records reflect that he obtained any information justifying his decision
6 to permit USPIS’s warrantless search. (*Id.*)

- 7 • **November 8, 2018:** At the FTC’s request, the Court enters a
8 preliminary injunction in the FTC Action, which continues the
9 receivership imposed by the TRO. (*Id.* at Ex. 17, p. 7.)
- 10 • **November 30, 2018:** On or around this date, the Receiver stops all
11 payments on Redwood’s Google Suite account.⁵
- 12 • **November 2018:** FTC issues several third-party subpoenas in the FTC
13 Action.
- 14 • **December 7, 2018:** FTC takes Danielle Walker’s deposition in the FTC
15 Action.
- 16 • **December 17, 2018:** [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED] (*Id.* at Ex. 18.)
- 20 • **January 7, 2019:** The Receiver files its first Application for Order
21 Approving and Authorizing Payment of Receiver and Receiver’s
22 Counsel’s Fees and Expenses from the inception of Receivership Estate
23 through November 30, 2018. (*Id.* at Ex. 19.) Attached to the
24 Application is a declaration containing the Receiver’s billings records
25 and a report of the Receiver’s activities. (*Id.* at Ex. 14.) This report does
26

27 ⁵ The Receiver’s bills and fees from this point forward do not record any payments
28 to Google for maintenance of Redwood’s Google Suite account. (*Id.* at Exs. 14, 65.)

1 not mention the USPIIS at all, let alone the [REDACTED]
2 [REDACTED] (*Id.* at Exs. 14, 19.) Moreover, despite the fact that
3 [REDACTED]
4 [REDACTED], Mr. Kane's billing records do not include these
5 conversations. (*Id.* at Exs. 14, 16, 19.)

- 6 • **February 8, 2019:** FTC serves written discovery on Jason Cardiff and
7 his wife Eunjung Cardiff in the FTC Action.
- 8 • **March 22, 2019:** FTC takes Julie Green's deposition in the FTC
9 Action.

- 10 • **April 4, 2019:** [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] (*Id.* at Ex. 20, p. 1.)

- 15 • **April 29, 2019:** [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED] (*Id.* at Ex. 22, p. 1.)

- 20 • **May 17, 2019:** [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 (*Id.* at Ex. 23, p. 2.) [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED] (*Id.* at p. 1.)

- 27 • **June 13, 2019:** [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED] (*Id.* at
4 Ex. 24, p. 2.)

- 5 • **June 14, 2019:** [REDACTED]
6 [REDACTED]
7 [REDACTED] (*Id.* at pp. 5–7.)

- 8 • **July 29, 2019:** [REDACTED]
9 [REDACTED]
10 [REDACTED] (*Id.* at Ex.
11 25.)

- 12 • **September 23, 2019:** The FTC files a joint motion for protective order
13 for discovery. (*Id.* at Ex. 26.) The proposed protective order fails to
14 alert the Court that [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]—a fact only known to the FTC, Receiver, and Government
18 at that time.

- 19 • **September 24, 2019:** The Court in the FTC Action enters a stipulated
20 protective order prohibiting the disclosure of confidential, proprietary,
21 or private information unless otherwise required or authorized by law
22 based on the joint motion filed on September 23, 2019. (*Id.* at Ex. 27.)

- 23 • **September 26, 2019:** Mr. Cardiff and the FTC exchange initial
24 disclosures in the FTC Action.

- 25 • **October 22, 2019:** [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 (*Id.* at Ex. 28.)

- 1 • **November 6, 2019:** [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED] This is the second such request by the Government to the FTC.
6 (See **July 24, 2018** entry.)
7 • **November 8, 2019:** [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED] (*Id.* at Ex. 30.)
11 • **December 11, 2019:** [REDACTED]
12 [REDACTED]
13 [REDACTED] (*Id.* at Ex. 31, pp. 1–
14 2.)
15 • **January 22, 2020:** [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED] (*Id.* at Ex. 32, p. 2.) [REDACTED]
19 [REDACTED]
20 (*Id.*) (emphasis added.) [REDACTED]
21 [REDACTED]
22 [REDACTED] (*Id.*)
23 • **February 12, 2020:** [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED] (*Id.* at Ex. 33, p. 2.) [REDACTED]
27 [REDACTED] (*Id.*) [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED] (*Id.* at p. 1.)
3 • **March 24, 2020:** [REDACTED]
4 [REDACTED]
5 [REDACTED] (*Id.* at Ex. 34, p. 1.) [REDACTED]
6 [REDACTED]
7 [REDACTED] (*Id.* at pp. 2–3.)
8 • **March 25, 2020:** [REDACTED]
9 [REDACTED]
10 [REDACTED] (*Id.* at Ex. 35, p. 1.)
11 • **April 23, 2020:** [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] (*Id.* at Ex. 36.) [REDACTED]
15 [REDACTED]
16 [REDACTED] (*Id.*)
17 • **May 1, 2020:** [REDACTED]
18 [REDACTED]
19 [REDACTED] (*Id.* at Ex. 37.)
20 • **May 15, 2020:** [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED] (*Id.* at Ex. 38, p. 1.) [REDACTED]
24 [REDACTED]
25 [REDACTED] (*Id.*) [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED] (*Id.*)

- 1 • **May 26, 2020:** [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] (*Id.* at Ex. 39 pp. 1, 3–
5 19.)
- 6 • **June 19, 2020:** [REDACTED]
7 [REDACTED] (*Id.* at Ex. 40.) [REDACTED]
8 [REDACTED]
9 [REDACTED] (*Id.*)
- 10 • **June 19, 2020:** [REDACTED]
11 [REDACTED]
12 [REDACTED] (*Id.* at Ex. 41.)
- 13 • **June 22, 2020:** [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED] (*Id.* at Ex. 42, pp. 1–2.)
- 17 • **June 22, 2020:** [REDACTED]
18 [REDACTED] (*Id.*
19 at Ex. 43, p. 1.)
- 20 • **June 23, 2020:** At the request of [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 (*Id.* at Ex. 42, pp. 1, 4–5.) [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED] (*Id.* at p.
27 1.)
28

- 1 • **June 29, 2020:** [REDACTED]
2 [REDACTED]
3 [REDACTED] (*Id.* at
4 Ex. 44, p. 2.)
5 • **July 6, 2020:** [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 (*Id.* at Ex. 45, p. 1.)
10 • **July 7, 2020:** [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] *Id.* at Ex. 46, p. 1.) (emphasis added.) [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED] (*Id.*)
19 (emphasis added.)
20 • **July 13, 2020:** [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED] (*Id.*)

- 1 • **July 13, 2020:** Cardiff and intervener VPL Medical file an *ex parte*
2 application to remove the Receiver from VPL because the Receiver has
3 suspended VPL’s manufacturing operations and failed to pay vendors
4 and critical staff. (*Id.* at Ex. 48.)
- 5 • **July 14, 2020:** The FTC files an opposition to the *ex parte* application
6 to remove the Receiver. (*Id.* at Ex. 49.)
- 7 • **July 15, 2020:** [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED] (*Id.* at Ex. 50.) [REDACTED]
11 [REDACTED]
- 12 • **July 16, 2020:** In accordance with the FTC’s July 14, 2020 opposition,
13 the Court enters an order denying the *ex parte* application to remove the
14 Receiver. (*Id.* at Ex. 51.)
- 15 • **August 6, 2020:** The FTC files a proposed final judgment in the FTC
16 Action, which includes an order for the Cardiffs and “their officers,
17 agents, employees, and all other persons in active concert or
18 participation with any of them” to destroy customer information
19 relating to his business and an order appointing Robb Evans LLC as a
20 permanent Receiver. (*Id.* at Ex. 52, pp. 28–29.)
- 21 • **August 11, 2020:** [REDACTED]
22 [REDACTED]
23 [REDACTED] (*Id.* at p. 1.)
- 24 • **August 11, 2020:** [REDACTED]
25 [REDACTED]
26 [REDACTED] (*Id.* at Exs.
27 53–59.) [REDACTED]
28

- 1 [REDACTED]
- 2 [REDACTED] (*Id.*)
- 3 • **August 14, 2020:** [REDACTED]
- 4 [REDACTED]
- 5 [REDACTED] (*Id.* at Ex. 60, p. 1.)
- 6 • **August 18, 2020:** [REDACTED]
- 7 [REDACTED]
- 8 [REDACTED] (*Id.* at Ex. 61.)
- 9 • **August 21, 2020:** [REDACTED]
- 10 [REDACTED]
- 11 [REDACTED] (*Id.* at Ex. 62, p. 2.)
- 12 • **August 26, 2020:** [REDACTED]
- 13 [REDACTED] (*Id.* at Ex. 63, p. 1.)
- 14 • **August 27, 2020:** [REDACTED]
- 15 [REDACTED]
- 16 [REDACTED] (*Id.* at Ex. 64.)
- 17 • **September 2, 2020:** The Receiver files another application requesting
- 18 fees for it and its counsel's work for the period of October 1, 2019
- 19 through June 30, 2020. In support of the application, Brick Kane
- 20 submits a declaration describing the Receiver's work during the
- 21 relevant period and attaching the Receiver's billing records. (*Id.* at Ex.
- 22 65.) The declaration and attached billing records make no mention of
- 23 assisting with the criminal investigation despite the aforementioned
- 24 communications, including on [REDACTED]
- 25 [REDACTED] (*Id.* at pp. 91, 96.)
- 26 • **September 14, 2020:** [REDACTED]
- 27 [REDACTED]
- 28

- 1 [REDACTED]
- 2 [REDACTED] (*Id.* at Ex. 66.)
- 3 • **October 2, 2020:** [REDACTED]
- 4 [REDACTED]
- 5 [REDACTED]
- 6 [REDACTED] (*Id.* at Ex. 67, p. 1.)
- 7 • **October 9, 2020:** The Court grants in part the FTC’s motion for
- 8 summary judgment and denies in part Cardiff’s motion for summary
- 9 judgment but defers ruling and judgment on the proper remedy pending
- 10 the results of a relevant Supreme Court case. (*Id.* at Ex. 68.)
- 11 • **October 13, 2020:** [REDACTED]
- 12 [REDACTED]
- 13 [REDACTED]
- 14 [REDACTED] [REDACTED] (*Id.* at Ex. 69.)
- 15 • **November 6, 2020:** [REDACTED]
- 16 [REDACTED]
- 17 [REDACTED] (*Id.* at Ex. 70.)
- 18 • **November 19, 2020:** [REDACTED]
- 19 [REDACTED]
- 20 [REDACTED] (*Id.* at Ex. 76, p. 1.)
- 21 • **January 8, 2021:** The Receiver files another application requesting
- 22 fees for it and its counsel’s work for the period of July 1, 2020 through
- 23 October 31, 2020. In support of the application, Brick Kane submits a
- 24 declaration describing the Receiver’s work during the relevant period
- 25 and attaching the Receiver’s billing records. (*Id.* at Ex. 71.) The
- 26 declaration and attached billing records make no mention of assisting
- 27 with the criminal investigation despite the aforementioned
- 28

communications, including on [REDACTED]

[REDACTED] (*Id.* at pp. 26, 42, 86.)

• **January 27, 2021:** [REDACTED]

[REDACTED] (*Id.* at Ex. 72.)

• **April 15, 2021:** [REDACTED]

[REDACTED] (*Id.* at Ex. 73.) [REDACTED]

[REDACTED] (*Id.*)

• **April 20, 2021:** [REDACTED]

[REDACTED] (*Id.* at Ex. 74, p. 1.)

• **April 20, 2021:** [REDACTED]

[REDACTED] (*Id.* at Ex. 75.) Notably, Redwood's active Google Suite account would have provided, among other items, data storage, audit logs, customer backup data, sales data, Nest Cam recordings, sales call recordings and Google Docs.⁶

⁶ [REDACTED]

[REDACTED] (Cardiff Decl., ¶ 9.)

- 1 • **April 20, 2021:** [REDACTED]
2 [REDACTED] (*Id.* at
3 Ex. 74, p. 1.)
- 4 • **April 21, 2021:** [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED] (*Id.*)
- 8 • **April 30, 2021:** [REDACTED]
9 [REDACTED] (*Id.* at Ex. 76, pp. 1–2.)
- 10 • **June 29, 2021:** The Court enters an order declining to impose any
11 monetary remedies, dissolving the Receivership, lifting the asset freeze
12 upon entry of judgment, and granting a permanent injunction. (*Id.* at
13 Ex. 77.)
- 14 • **June 30, 2021:** [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED] (*Id.* at Ex. 78.)
- 18 • **July 6, 2021:** [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED] (*Id.* at p. 1; Ex. 80.) [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED] (*Id.* at Ex. 79, p. 1.)
28

- 1 • **August 26, 2021:** The Court enters an order directing the FTC to
2 submit a proposed judgment. (*Id.* at Ex. 81.)
- 3 • **September 3, 2021:** The FTC files a proposed permanent injunction in
4 the FTC Action, which includes the previous provision requiring that
5 Cardiff destroy evidence in his possession and adds a new provision
6 that prohibits the Receiver's ability to return customer information to
7 Cardiff. (*Id.* at Ex. 82, pp. 3, 30–31, 61.) [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED] (*Id.* at Ex. 83.)
- 11 • **March 1, 2022:** The Court in the FTC Action enters a permanent
12 injunction, adopting the FTC's request to limit the Receiver's ability to
13 share information and require that Cardiff destroy evidence. (*Id.* at Ex.
14 84, p. 24.)
- 15 • **March 2022 (exact date unknown):** The USAO presents its case
16 against Cardiff to the Grand Jury.⁷ (ECF No. 1.)
- 17 • **September 14, 2022:** The Receiver submits a request in the FTC
18 Action for an order permitting destruction of data and evidence related
19 to Cardiff and Redwood's business operations because it was
20 prohibited by the permanent injunction from returning the documents to
21 Cardiff. (*Id.* at Ex. 85, p. 3:20–22; Ex. 86, ¶ 14.)

22
23 ⁷ [REDACTED]
24 [REDACTED]
25 was likely used directly or indirectly by the Government to present its case against
26 Cardiff to the Grand Jury. Significantly, there is no evidence that the Government
27 complied with the requirement under the Freedom of Information Act to provide
28 notice to the FTC and obtain written authorization from the FTC before utilizing
information obtained pursuant to a request for non-public information in court. (*Id.*
at Ex. 30.)

- 1 • **September 14, 2022:** [REDACTED]
2 [REDACTED]
3 [REDACTED] (*Id.* at Ex. 87.) The FTC does not object to
4 the destruction request, despite its knowledge and participation in the
5 Government’s criminal investigation of Cardiff. Nor did the
6 Government take any action in response to the request, despite their
7 knowledge that the Receiver has made this request.
- 8 • **September 30, 2022:** Absent objection, the Court grants the Receiver’s
9 September 14, 2022 request to destroy evidence related to Cardiff and
10 Redwood’s business operations. (*Id.* at Ex. 88.)
- 11 • **October 2, 2022:** [REDACTED]
12 (*Id.* at Ex. 89.) Counsel for the Receiver subsequently confirms that the
13 data and other tangible items were successfully destroyed pursuant to
14 the Court’s authorization. (Cardiff Decl., ¶ 8.) Accordingly, the
15 following evidence was ultimately lost or destroyed:
 - 16 (1) The complete content of Redwood’s Google Suite account,
17 including Nest Cam recordings from Redwood office spaces,
18 sales call audio recordings, daily customer sale log sheets, audit
19 logs, and Google Hangout Chat⁸ data;
 - 20 (2) Redwood’s staff’s daily-meeting handwritten logbooks;
 - 21 (3) Redwood employee personnel files; and
 - 22 (4) Handwritten notes stored in Cardiff’s office. (*Id.* at ¶ 9.)
- 23 • **January 31, 2023:** The Indictment against Cardiff returned by the
24 March 2022 Grand Jury is filed in this Action charging Cardiff with
25

26

27 ⁸ The Google Hangout Chat feature was utilized by Redwood staff to communicate
28 internally about the daily operations of Redwood, which included conversations
 regarding rebilling and customer accounts, among other things. (Cardiff Decl., ¶ 4.)

1 access device fraud under 18 U.S.C. § 1029(a)(5), aggravated identity
2 theft under 18 U.S.C. § 1028A(a)(1), and two counts of witness
3 tampering under 18 U.S.C. § 1512(b)(2)(B), all in relation to his
4 business practices at Redwood. (ECF No. 1.)

- 5 • **November 27, 2023:** Cardiff is arrested, the Indictment against him is
6 unsealed, and Cardiff is arraigned. (ECF Nos. 7, 11.)
- 7 • **December 6, 2023:** Cardiff is released on multiple pretrial release
8 conditions, including that he abide by a curfew and remain in the
9 custody of Stephen Cochell, one of his attorneys. (ECF No. 21.)

10 **III. ARGUMENT**

11 **A. The Government Violated Cardiff’s Due Process Rights and** 12 **Circumvented His Fourth Amendment Rights By Conducting a** 13 **Joint Civil Action and Criminal Investigation in Bad Faith**

14 **1. The Court Should Dismiss an Indictment When the Government** 15 **Engages in a Civil Action and a Criminal Investigation in Bad** 16 **Faith**

17 Generally, it is permissible for the Government to conduct “parallel civil and
18 criminal investigations,” *provided* the investigations remain separate and comply
19 with the Fifth Amendment Due Process Clause. *U.S. v. Kordel*, 397 U.S. 1, 11–12
20 (1970); *U.S. v. Stringer*, 535 F.3d 929, 936 (9th Cir. 2008). The government may
21 conduct parallel civil and criminal investigations without violating the due process
22 clause, so long as it does not act in bad faith. *Stringer*, 535 F.3d at 936. Bad faith
23 exists where the government (1) conducts a covert criminal investigation under the
24 guise of a civil action; (2) engages in deceit or affirmative misrepresentations
25 regarding the true purpose of the investigation; or (3) engages in conduct which
26 demonstrate “special circumstances” that might suggest the unconstitutionality or
27 impropriety of a criminal prosecution. *See Kordel*, 397 U.S. at 12–13; *Stringer*, 535
28 F.3d at 937 (dismissal or suppression of evidence may be warranted “where the

1 government made affirmative misrepresentations or conducted a civil investigation
2 solely for purposes of advancing a criminal case.”).

3 When a civil investigation becomes “inescapably intertwined with the
4 criminal investigation conducted by the Department of Justice” (as is the case here),
5 it “negate[s] the existence of parallel investigations.” *U.S. v. Scrushy*, 366 F.Supp.2d
6 1134, 1141 (N.D. Ala. 2005). Moreover, when the government “manipulate[s] the
7 simultaneous investigations for its own purpose” it “departs from the proper
8 administration of justice.” *Id.* (emphasis added). Thus, when the government is
9 suing a defendant civilly and conducting a criminal investigation against him at the
10 same time, the government must inform the defendant of the criminal investigation.
11 *See id.* at 1139–40 (“Failing to advise [the defendant] about the criminal
12 investigation of which he was a target . . . cannot be said to be in keeping with the
13 proper administration of justice. Our justice system cannot function properly in the
14 face of such cloak and dagger activities by those charged with upholding the
15 integrity of the justice system.”).

16 Federal courts have supervisory authority over the manner in which federal
17 law enforcement agencies exercise their power to conduct investigations and may
18 find dismissal or suppression of evidence as an appropriate remedy to governmental
19 misconduct. *Rea v. United States*, 350 U.S. 214, 217 (1956); *Stringer*, 535 F.3d at
20 937, 940–42; *U.S. v. Dahlstrum*, 493 F.Supp. 966, 975 (C.D. Cal. 1980) (mandating
21 dismissal of an indictment where the Internal Revenue Service issued a civil
22 summons for the purpose of gathering evidence for a criminal prosecution).

23 2. The Government Utilized the FTC Action to Develop a Criminal
24 Case Against Cardiff

25 As early as July 17, 2018—many months before the FTC Action was
26 initiated—the Government began to coordinate with the FTC to jointly investigate
27 Cardiff. On July 24, 2018, [REDACTED]
28 [REDACTED] seeking materials related to Redwood and Cardiff. (Larson Decl.,

1 Ex. 3.) [REDACTED]
2 [REDACTED]
3 [REDACTED] (*Id.*) As such, the USPIS explicitly stated that it was [REDACTED]
4 [REDACTED] before the FTC Action was even filed.

5 On October 5, 2018, [REDACTED]
6 [REDACTED]
7 [REDACTED] (*Id.* at Ex. 10.) Five days later, on October 10, the
8 FTC filed the FTC Action and immediately requested the appointment of Robb
9 Evans LLC as a temporary receiver. (*Id.* at Exs. 11, 13.) The proposed order
10 submitted by the FTC, which the Court adopted, authorized the Receiver to
11 “cooperate with *reasonable* requests for information or assistance from any state or
12 federal civil or criminal law enforcement agency.” (*Id.* at Ex. 13, p. 25.) (emphasis
13 added.)

14 Eight days later, on October 18, 2018, [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED] (*Id.* at Ex. 16, p. 1.) Thus, after the
18 USPIS failed to obtain information [REDACTED]
19 [REDACTED], it worked with the FTC to have a receiver appointed (which had previously
20 cooperated with the FTC and USPIS), and shortly thereafter, the Receiver provided
21 consent for [REDACTED]
22 While the Receiver’s appointment allowed for cooperation with *reasonable* requests
23 by law enforcement, cooperation to the level of [REDACTED]
24 [REDACTED] within days of appointment was
25 anything but reasonable. Yet, this early action set the tone for the intimate
26 collaboration between the Government, the FTC, and the Receiver which continued
27 throughout the course of the FTC Action. For example, the Receiver went on to (1)
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]; (2) [REDACTED]
3 [REDACTED]; (3) [REDACTED]
4 [REDACTED]
5 [REDACTED]; and (4) [REDACTED]
6 [REDACTED]. (*Id.* at Exs. 39, 42, 61, 63.) Indeed, on other occasions the Receiver
7 went so far as to [REDACTED]
8 [REDACTED]; for example, when the Receiver received [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED] (*Id.* at Ex. 40 (noting that the government [REDACTED]
12 [REDACTED])). Moreover, the Receiver took active
13 steps to conceal from Cardiff his cooperation with the Government, [REDACTED]
14 [REDACTED]
15 [REDACTED]. (*Id.* at Ex. 75.)

16 The Government and FTC were also in regular communication throughout the
17 FTC Action. For example, the FTC provided the Government with [REDACTED]
18 [REDACTED]. (*E.g., id.* at Exs.
19 31, 35, 83, 87.) Indeed, [REDACTED]
20 throughout their investigation, [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED] (*E.g., id.* at Exs. 34, 37, 64, 66, 70, 72.) Undoubtedly,
24 these [REDACTED] were designed to brainstorm how to maximize and use each
25 agency's knowledge and resources in prosecuting Cardiff both civilly and
26 criminally.

27 These regular communications and sharing of evidence indicate that the
28 criminal and civil investigations were not conducted in parallel but rather were

1 wholly intertwined and all but formally integrated. *See Scrushy*, 366 F.Supp.2d at
2 1139 (“To be parallel, by definition, the separate investigations should be like the
3 side-by-side train tracks that never intersect.”). As such, the failure to inform Cardiff
4 of the criminal investigation while forcing him to defend himself and participate in
5 the civil processes associated with the FTC Action in and of itself necessitates
6 dismissal. But here, the violations go far beyond the failure to notify Cardiff. [REDACTED]
7 [REDACTED] shortly after the FTC had a
8 known ally appointed as the Receiver, and the subsequent [REDACTED]
9 [REDACTED], indicates that,
10 from the onset, the FTC Action was intended to serve as a vehicle and stalking horse
11 for building a criminal case against Cardiff. Indeed, the Receiver’s May 26, 2020
12 [REDACTED] makes it abundantly clear that the Receiver became part and
13 parcel of the FTC-DOJ-USPIS prosecution team. Thus, the Government conducted a
14 covert criminal investigation under the guise of the FTC Action. As such, the
15 government acted in bad faith and the Indictment must be dismissed.

16 3. The Government Engaged in Trickery to Deceive Cardiff Into
17 Believing No Criminal Investigation Was Taking Place

18 The Indictment also must be dismissed because the government deceived
19 Cardiff into believing that the investigation was exclusively civil in nature. (*See*
20 *Stringer*, 535 F.3d at 940; *Kordel*, 397 U.S. at 12–13).

21 Preliminarily, by obtaining evidence directly from the Receiver and FTC, the
22 Government was circumventing the normal subpoena and warrant procedures which
23 would have provided Cardiff with notice of the criminal investigation. Moreover,
24 the Government took additional steps to ensure that Cardiff was left in the dark
25 regarding the criminal investigation. For example, (1) the Government submitted [REDACTED]
26 [REDACTED]

27 [REDACTED] (2) the FTC identified [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]; and (3) the Government allowed the Receiver [REDACTED]
4 [REDACTED]
5 [REDACTED]. (Larson Decl., Exs. 3, 13, 29, 75.)

6 Accordingly, the government also acted in bad faith by taking affirmative
7 steps to intentionally deceive Cardiff into believing there was only a civil
8 investigation. This too necessitates the dismissal of the Indictment.

9 **B. The Government Violated Cardiff's Due Process Rights By Failing**
10 **to Preserve Potentially Exculpatory Evidence**

11 1. Dismissal is the Appropriate Remedy Where the Government
12 Fails to Preserve Potentially Exculpatory Evidence in Bad Faith

13 Where the government fails to preserve potentially exculpatory evidence in
14 bad faith, their conduct is considered a due process violation. *U.S. v. Robertson*, 895
15 F.3d 1206, 1211 (9th Cir. 2018); *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988).⁹
16 Specifically, a due process violation occurs where the following elements exist: (1)
17 the government acted in “bad faith” in failing to preserve potentially exculpatory
18 evidence; (2) the unavailable evidence possessed potentially exculpatory value that
19 was apparent before the evidence was destroyed; and (3) the defendant is unable to
20 obtain comparable evidence by other reasonable means. *California v. Trombetta*,
21 467 U.S. 479, 489 (1984); *Youngblood*, 488 U.S. at 58. Whether “bad faith” exists
22 turns on whether the government knew that the evidence at issue had potentially
23

24 _____
25 ⁹ “Exculpatory” evidence is evidence that tends to prove the innocence of the
26 defendant (i.e., it is favorable to the defense). *U.S. v. Bruce*, 984 F.3d 884, 895 (9th
27 Cir. 2021). “Exculpatory” does not mean that it must result in the defendant’s
28 acquittal or benefit the defense in every regard; rather, “exculpatory” describes a
broader category of evidence that, if disclosed and used effectively, could make the
difference between conviction and acquittal. *Id.*

1 exculpatory value at the time it was lost or destroyed. *Youngblood*, 488 U.S. at 56–
2 57 n. *; *Robertson*, 895 F.3d at 1211.

3 Where the government destroys potentially exculpatory evidence in bad faith,
4 the appropriate remedy is dismissal of the indictment. *U.S. v. Cooper*, 983 F.2d 928,
5 929, 933 (9th Cir. 1993) (upholding dismissal of an indictment where the
6 government acted in bad faith by destroying the defendants’ chemical laboratory
7 equipment despite repeated suggestions of its potential exculpatory nature); *U.S. v.*
8 *Zaragoza-Moreira*, 789 F.3d 971, 982 (9th Cir. 2015) (directing the district court to
9 dismiss the indictment where the government destroyed potentially exculpatory
10 video evidence in bad faith); *U.S. v. Chen*, 605 F.2d 433, 435 (9th Cir. 1979) (noting
11 that federal agents’ intentional destruction of currency form was “unjustified and
12 inexcusable”). As explained below, the Indictment must be dismissed because the
13 government knowingly permitted the destruction of potentially exculpatory evidence
14 in bad faith.

15 2. The Government Permitted Destruction of Potentially
16 Exculpatory Evidence

17 The Government contends that Cardiff enrolled Redwood customers in
18 autoship programs and charged their credit cards without their permission. Cardiff
19 denies these allegations. Redwood’s communications with customers and its use of
20 their credit cards were carefully documented by Cardiff and his team at Redwood in
21 the form of sales call recordings, Nest Cam recordings, staff meeting handwritten
22 logbooks, customer sale log sheets, handwritten notes, and data reports of customer
23 charges and rebills, among other things. (Cardiff Decl., ¶¶ 3–4.) Many of these
24 records were stored electronically on Redwood’s Google Suite account. (*Id.* at ¶ 3.)
25 It is precisely these documents and recordings that Cardiff would, of course, use to
26 establish that the allegations are false.

27 However, on April 20, 2021, the Government allowed the Receiver [REDACTED]
28 [REDACTED]

1 [REDACTED] (Larson Decl., Ex. 75.) This decision invariably led to the
2 destruction of data associated with the account. (*Id.* at Ex. 76.)

3 Then, on March 1, 2022, the Court entered a permanent injunction which (1)
4 ordered Cardiff to destroy any documents containing customer information, and (2)
5 prohibited the Receiver from returning any documents containing customer
6 information to Cardiff. (*Id.* at Ex. 84, pp. 24–25, §§ XVIII(A)(2), (B).) Although
7 these provisions were proposed by the FTC [REDACTED]

8 [REDACTED] the Government failed to object or otherwise take any
9 measure to preserve the documents. (*Id.* at Ex. 83.) Months following this order, on
10 September 14, 2022, the Receiver requested that the Court authorize him to destroy
11 the documents containing customer information because he was prohibited from
12 returning them to Cardiff. (*Id.* at Ex. 85.) The FTC [REDACTED]

13 [REDACTED]
14 (*Id.* at Ex. 87.) Nonetheless, neither the FTC nor the Government objected or
15 otherwise alerted the Court, and the Court thereafter entered the order and the
16 Receiver, who is now deceased, ultimately destroyed the documents. (*Id.* at Ex. 88;
17 Cardiff Decl., ¶¶ 8, 14.)

18 The Government’s case against Cardiff revolves around how Redwood
19 operated on a daily basis. However, Cardiff is unable to adequately prepare a
20 defense because the recordings and documents reflecting the daily operations of
21 Redwood—which would potentially and actually refute the Government’s criminal
22 allegations against him—were destroyed with the Government’s consent and notice.
23 (Larson Decl., Exs. 84, 88.)¹⁰ Specifically, these recordings and documents would
24

25 ¹⁰ The Government may argue that allowing Cardiff and the Receiver to destroy this
26 potentially exculpatory evidence was not in bad faith because it preserved copies of
27 some or all of these records. However, despite Cardiff’s requests, the Government
28 has refused to advise Cardiff whether these specific categories of evidence were
copied or produced. (Larson Decl., ¶¶ 92–93.) Moreover, the Government has

1 have shown that Redwood's customers were presented with clear options, including
2 the ability to engage in a one-time sale or the monthly rebilling system. (Cardiff
3 Decl., ¶ 10.) The Nest Cam video and telephone audio recordings in particular
4 would have provided the exact content of the conversations that occurred between
5 Redwood and its customers, refuting the Government's claim that customers were
6 enrolled in the monthly rebilling system without their express authorization and that
7 Cardiff directed the destruction of evidence. (*Id.* at ¶ 11.) The employees' daily
8 handwritten logbooks, which were used to document discussions with Cardiff,
9 would have further demonstrated that Cardiff gave clear instructions regarding the
10 enrollment process, including the need for express consent prior to charging any
11 customer's credit card. (*Id.* at ¶ 12.) Likewise, Cardiff's own handwritten notes and
12 the daily customer sales log sheets would have demonstrated the protocols that he
13 had in place to ensure that Redwood's customers who participated in the monthly
14 rebilling plan did so with their prior authorization. (*Id.* at ¶ 13.) Finally, the Google
15 Suite audit logs would have shown that emails and documents were not deleted by
16 Redwood employees, corroborating the fact that Cardiff did not order the
17 destruction of any evidence as charged in the Indictment. (*Id.* ¶ 11.) The potentially
18 exculpatory nature of this lost evidence is obvious and apparent and goes directly to
19 the heart of what is at issue in this case. Moreover, both Mr. Kane and Robb Evans
20 (the owner of Robb Evans LLC) passed away in the Fall of 2021 and the company
21 _____
22 produced over 17.8 million pages of documents and many of these exculpatory
23 documents are handwritten and cannot be found via electronic searches. (*Id.*) Thus,
24 even if the Government did claim that they copied and produced the potentially
25 exculpatory evidence, Cardiff would have no way to verify the accuracy of this
26 claim, nor would he actually be able to locate the documents without incurring
27 enormous time and cost. As such, even if the destroyed records were copied and
28 produced (which the Government has not confirmed), by ordering Cardiff and the
Receiver to destroy the records, keeping the only copy, and then producing them
intermixed with millions of pages of other documents, the potentially exculpatory
evidence would still be functionally unavailable to Cardiff and thus the destruction
remained prejudicial.

1 itself dissolved in June 2023. (*Id.* at ¶ 14.) As such, the prejudice caused by the
2 destruction of this evidence cannot be cured by calling these witnesses to testify
3 regarding the contents of the destroyed recordings and documents. The Government
4 acted in bad faith—in clear violation of Cardiff’s due process rights—by permitting
5 the destruction of this potentially exculpatory evidence. *Youngblood*, 488 U.S. at
6 56–57 n.*; *Robertson*, 895 F.3d at 1211.¹¹

7 **C. The Government Engaged in Fraud on the Court by Procuring and**
8 **Utilizing Appointment of a Receiver, Omitting Material Facts from**
9 **the Protective Order, and Failing to Inform the Court of the**
10 **Significance of its Destruction of Evidence Orders**

11 The Indictment also must be dismissed based on the government’s fraud on
12 the Court in the FTC Action. “Fraud on the Court” is “fraud which does or attempts
13 to, defile the [C]ourt itself, or is a fraud perpetrated by officers of the [C]ourt so that
14 the judicial machinery cannot perform in the usual manners its impartial task of
15 adjudging cases that are presented for adjudication.” *U.S. v. Sierra Pac. Indus.*, 100
16 F.Supp.3d 948, 955 (E.D. Cal. 2015) (quoting *Appling v. State Farm Mut. Auto. Ins.*
17 *Co.*, 340 F.3d 769, 780 (9th Cir. 2003)) (cleaned up). To determine if fraud on the
18 Court exists, courts look to whether the fraudulent conduct “harmed the integrity of
19 the judicial process.” *U.S. v. Estate of Stonehill*, 660 F.3d 415, 444 (9th Cir. 2011)
20 (quoting *Alexander v. Robertson*, 882 F.2d 421, 424 (9th Cir. 1989) (cleaned up). As
21 part of this analysis, courts consider whether the “fraud prevents the opposing party
22 from fully and fairly presenting his case” and whether the fraud “involve[d] an
23 unconscionable plan or scheme which is designed to improperly influence the
24

25 ¹¹ Notably, “the Due Process Clause of the Fourteenth Amendment, as interpreted in
26 *Brady*, makes the good or bad faith of the State irrelevant when the State fails to
27 disclose to the defendant material exculpatory evidence.” *Youngblood*, 488 U.S. at
28 57. Thus, even if the Government did not act in bad faith (and it did), the Indictment
still must be dismissed because here the destroyed evidence was more than just
potentially exculpatory, it was actually materially exculpatory.

1 [C]ourt in its decision.” *Sierra Pac. Indus.*, 100 F.Supp.3d at 955 (quoting *Abatti v.*
2 *C.I.R.*, 859 F.2d 115, 119 (9th Cir. 1988) and *Pumphrey v. K.W. Thompson Tool*
3 *Co.*, 62 F.3d 1128, 1131 (9th Cir. 1995) (cleaned up)).

4 Non-disclosure amounts to fraud on the Court if it was “so fundamental that it
5 undermined the workings of the adversary process itself” or if it would have
6 significantly impacted the Court’s decision and the withheld information would
7 have significantly changed the information available to the district court. *Sierra Pac.*
8 *Indus.*, 100 F.Supp.3d at 956 (quoting *Estate of Stonehill*, 660 F.3d at 445–46)
9 (cleaned up).

10 1. The Government Committed Fraud on the Court By Omitting
11 and Concealing Material Facts

12 Here, the Government first committed fraud on the Court when it worked
13 with the FTC to procure a Receiver for the claimed purpose of “protecting assets,”
14 when the Government actually intended to use the Receiver [REDACTED]
15 [REDACTED] and to otherwise collect and provide additional evidence to the
16 Government outside the normal procedures for subpoenas and warrants. (Larson
17 Decl., Ex. 13.) Indeed, at no point did the FTC or Government disclose to the Court
18 that they were using the Receiver, an officer of the Court, as a *de facto* investigating
19 agent. In fact, the Receiver omitted virtually all of its interactions with the
20 Government in the time entries that it submitted to the Court in support of its fee
21 applications and reports. However, at no time did the FTC or Government bring
22 these critical omissions to the Court’s attention.¹²

23
24
25 ¹² To the extent the Government claims that grand jury secrecy prevented disclosure
26 of the Receiver’s extensive cooperation and communications with the Government
27 to the Court, there is no indication that the FTC or the Government attempted to
28 alert the Court to the full story outside the presence of the FTA Action defendants—
through an *in camera* filing or otherwise.

1 The Government also perpetrated fraud on the Court when it coordinated with
2 the FTC in omitting key material facts when the FTC lodged the proposed protective
3 order in the FTC Action. The Court entered the protective order on September 24,
4 2019. (*Id.* at Ex. 27.) However, the Court did so without first being advised that a
5 substantial amount of nonpublic information *had already* been released to the
6 Government by the Receiver. Because the Court’s protective order was expressly
7 designed to create rules to avoid the dissemination of confidential, proprietary, or
8 private information, the FTC, Receiver or the Government should have informed the
9 Court of these activities. Instead, by choosing not to share this critical information,
10 they led the Court into unwittingly entering into a protective order that was not
11 retroactive and did not apply to these previously-shared documents.

12 Moreover, and perhaps most significantly, the Government perpetrated fraud
13 on the Court by allowing the Court to approve requests for the destruction of
14 documents containing customer information, despite the Government’s knowledge
15 that the evidence had potentially exculpatory value in its future criminal case. (*Id.* at
16 Exs. 51, 82, 84–89.) Indeed, the Government was aware that the FTC requested that
17 the Court order Cardiff to destroy this exculpatory evidence and prohibit the
18 Receiver from providing this evidence to Cardiff but failed to object or intervene in
19 any way. (*E.g., id.* at Exs. 52, 83.) Then, unable to return the documents, the
20 Receiver requested to destroy the records. (*Id.* at Exs. 85–86.) The Government was
21 also aware of this request, but again failed to object or intervene in any way. (*Id.* at
22 Ex. 87.)

23 Without the benefit of knowing that there was an ongoing criminal
24 investigation and that the documents and recordings containing customer
25 information constituted exculpatory evidence, the Court approved both requests and
26 the documents and recordings were ultimately destroyed. (*Id.* at Exs. 84, 88.) The
27 withheld information would have significantly impacted the Court’s decision to
28 approve the destruction requests because a court would never enter an order

1 requiring destruction of exculpatory evidence on the eve of a criminal prosecution.

2 Accordingly, the Government's conduct in committing fraud on the Court
3 necessitates dismissal of the Indictment.

4 2. The Government Committed Fraud on the Court By Co-opting
5 the Receiver and Using Him to Assist in the Criminal
6 Investigation in Violation of His Fiduciary Duties

7 The Government also committed fraud on the Court by co-opting the
8 Receiver and urging him to violate his fiduciary duties to Cardiff to further the
9 Government's criminal investigation. A Receiver "receives her power and authority
10 directly from the court and therefore is subject to the court's directions and orders in
11 the discharge of her official duties." *Fed. Trade Comm'n v. On Point Glob. LLC*,
12 2020 WL 5819809, at *2 (S.D. Fla. Sept. 30, 2020); *see also SEC v. Capital*
13 *Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005); *North American Broadcasting,*
14 *LLC v. U.S.*, 306 Fed.Appx. 371, 373 (9th Cir. 2008). Once appointed, a Receiver is
15 considered "a neutral officer of the Court," not an arm of a government agency. *On*
16 *Point Glob. LLC*, 2020 WL 5819809, at *2 (quoting *Sterling v. Stewart*, 158 F.3d
17 1199, 1201 (11th Cir. 1998) (cleaned up); *see also SEC v. Schooler*, 2015 WL
18 1510949, at *2 (S.D. Cal. Mar. 4, 2015). As such, a Receiver "should be impartial
19 between the parties and avoid the appearance of impropriety." *Id.* at *3 (citing Code
20 of Conduct for United States Judges, Canons 2, 3(A)(1) (2014); Model Code of
21 Judicial Conduct R. 1.2, 2.2 (2010)).¹³ A Receiver is only partial to the Receivership
22 estate because the Receiver owes a "'fiduciary duty to the owners of the property
23 under his care' and thus must 'protect and preserve' the [R]eceivership estate's
24 assets 'for the benefit of the person ultimately entitled to it.'" *Id.* (quoting *Sovereign*

25
26 ¹³ The propositions cited to by *Schooler* remain the same in the current versions of
27 both the Code of Conduct for United States Judges and Model Code of Judicial
28 Conduct. The canon and rule numbers, respectively, remain the same in the current
versions of the publications.

1 *Bank v. Schwab*, 414 F.3d 450, 454 (3d Cir. 2005)).

2 Under these principles, a Receiver should abide by the following ethical
3 standards at a minimum:

- 4 1. The Receiver owes a fiduciary duty to the Court and to the eventual
5 owners of the Receivership estate's assets;
- 6 2. The Receiver thus has a duty to protect, preserve, administer, and
7 distribute appropriately the receivership estate's assets and must
8 advocate, to the Court, courses of action that are consistent with these
9 duties;
- 10 3. The Receiver may engage in appropriate *ex parte* communication with
11 the parties where necessary to either carry out the Receiver's duties or
12 effectuate discovery;
- 13 4. The Receiver, however, is obligated to remain unbiased between the
14 parties in the litigation and must not take positions or advocate for
15 actions primarily for the benefit of one party unless such positions or
16 actions are consistent with the Receiver's fiduciary duties; and
- 17 5. The Receiver must avoid the appearance of impropriety so as to
18 maintain confidence in the impartiality of the judiciary.

19 *Schooler*, 2015 WL 1510949, at *3–*4.

20 Here, the Government prompted, persuaded, and permitted the Receiver to
21 violate his fiduciary duties and exhibit bias in favor of the Government on several
22 occasions. The October 10, 2018 TRO appointing the Receiver provided limitations
23 on the Receiver's ability to share information; the TRO allowed cooperation with
24 other law enforcement agencies only upon a *reasonable request* from law
25 enforcement. (Larson Decl., Ex. 13, p. 25, § XVI(T).) Barely a week later, on
26 October 18, 2018, the Receiver [REDACTED]
27 [REDACTED] (*Id.* at Ex. 16.) On October 22,
28 2018, the Receiver's team "assisted" the USPIS with [REDACTED]

1 [REDACTED]
2 [REDACTED] (*Id.*, Ex. 14, p. 41; Ex. 16, p. 1.) [REDACTED] of
3 Redwood's office cannot be considered a "reasonable request" from law
4 enforcement given the requirements of the Fourth Amendment. Nor could it be
5 justified as a reasonable step to advance the goals of a receivership. As such, the
6 Receiver's [REDACTED] is evidence of the
7 Receiver's bias against Cardiff and a violation of his fiduciary duties at the behest of
8 the government.

9 As explained in Section III.A.2, *supra*, there are numerous other examples of
10 the government instrumentalizing the Receiver to aid the criminal investigation,
11 despite knowing that doing so would violate the Receiver's fiduciary duties to
12 Cardiff. For example, the Receiver gave consent [REDACTED]
13 [REDACTED], provided the
14 government with vast amounts of information, and even alerted the Government to
15 activities which were far afield of the Receivership estate. Indeed, the Receiver's
16 waiver of privilege dispensed with any semblance of impartiality and simply
17 confirms that the Receiver was integrated into the prosecution team.

18 Reflective of that integration, the Receiver and the Government were in
19 constant contact regarding Cardiff from the moment the Receiver was appointed in
20 October 2018. This use of the Receiver as a quasi-governmental criminal
21 investigator was never disclosed to the Court and would never have been authorized.
22 Indeed, the Receiver omitted virtually all of its interactions with the Government in
23 its fee applications and reports to the Court. Accordingly, by using the Receiver to
24 aid in their criminal investigation, despite knowing that such assistance violated the
25 Receiver's fiduciary duties, the Government engaged in a fraud on the Court which
26 necessitates dismissal of the Indictment.

27 ///

28 ///

**D. The Pre-Indictment Delay of Prosecution Prejudiced Cardiff's
Right to Prepare a Defense and Secure a Fair Trial**

The ability of the accused to prepare his defense is a fundamental aspect of our adversary system. *Kinney v. Lenon*, 425 F.2d 209, 210 (9th Cir. 1970). A pre-indictment delay may lead to the denial of a defendant's rights to due process of law. *U.S. v. Lovasco*, 431 U.S. 783, 790 (1977). In considering whether a pre-indictment delay requires dismissal of an indictment, a Court must first determine whether the defendant suffered actual prejudice because of the delay. *U.S. v. Swacker*, 628 F.2d 1250, 1254 (9th Cir. 1980). Showing that witnesses have been lost or that evidence has become unavailable due to the delay suggests actual prejudice. *U.S. v. Mills*, 641 F.2d 785, 788 (9th Cir. 1981).

As detailed above, the Government began investigating Cardiff in July 2018. By October 2018, the Government was well aware that the FTC had filed a Complaint, alleging that Cardiff enrolled his Redwood customers in a monthly rebilling scheme without authorization. Within days of the filing of the FTC Action, the Government had completed an exhaustive [REDACTED]. The Government then engaged in years of coordination with the FTC and the Receiver, discussing the details of the credit card fraud case being developed against Cardiff through the FTC Action.

By no later than August 2020, the Government was also well aware of the allegations now in the Indictment that Cardiff had engaged in evidence tampering back in 2018. The Government knew about these claims through its extensive work with the FTC and its review of the FTC's 2020 motion for summary judgment which expressly accused Cardiff of this obstruction and the Receiver's January 7, 2019 report. (Larson Decl., Ex. 14, p. 16; Ex. 90, p. 46.)

Nonetheless, the Government did not indict Cardiff in 2018, 2019, 2020, 2021, or 2022. During this delay, on April 20, 2021, the Government allowed the

1 Receiver to [REDACTED], destroying this
2 potentially exculpatory evidence. (Larson Decl., Ex. 75.) Then, the Government
3 continued to stand on the sidelines as it knowingly watched the FTC and the
4 Receiver seek and obtain court orders in 2022 to destroy additional critical evidence
5 pertaining to Cardiff and his Redwood business operations. (*Id.* at Exs. 84, 88.)
6 Moreover, during this delay, key witnesses who could have testified regarding the
7 unconstitutional coordination between the Government, the FTC, and the
8 Receiver—Brick Kane and Robb Evans—passed away.

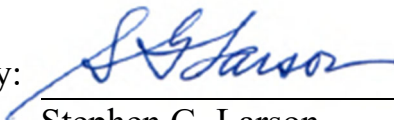
9 In January 2023, after permitting key evidence to be destroyed, the
10 Government sought and obtained this Indictment reaching back to the conduct that it
11 had been aware of since 2018. Because the Government’s pre-indictment delay has
12 substantially prejudiced Cardiff’s constitutional right to prepare a defense and
13 secure a fair trial, this case should be dismissed.

14 **IV. CONCLUSION**

15 Based on the foregoing, Cardiff requests dismissal with prejudice of the
16 Indictment. In the alternative, Cardiff requests suppression of all evidence obtained
17 by the Government through its unlawful criminal investigation. Additionally,
18 Cardiff requests an evidentiary hearing to further develop the record in support of
19 this Motion.

20
21 Dated: April 8, 2024

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22
23
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